

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-6-11  
ADMINISTRATIVE REVIEW, EVIDENTIARY, FAIR HEARING AND ARBITRATION**

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**1240-6-11-.01 ADMINISTRATIVE REVIEW.**

- (1) A manager who is dissatisfied with any action arising from the operation or administration of the vending facility program may ask for a review of the action by filing a written request within thirty (30) days of the agency's action with the Director of the Services for the Blind Division, Tennessee Department of Human Services, or the manager may file an appeal pursuant to rule 1240-6-11-.02. If the manager elects to have a review conducted by the director of the Services for the Blind Division, the written request for such review which may be filed by the manager or a chosen representative, must specify the action or actions to be reviewed and the reason or reasons for the manager's dissatisfaction.
- (2) Upon receipt of a request for an administrative review the Director of the Services for the Blind Division shall designate a representative from the central office staff, who shall have fifteen (15) days to file a written response, outlining the reason or reasons for any action objected to be the manager. In filing his/her response, the central office representative shall forward a copy to the manager and to the manager's representative, if designated.
- (3) Upon receipt of the response from the central office representative, the manager or his/her representative shall have ten (10) working days in which to file any objections or make reply. After which, the Director of the Services for the Blind Division shall evaluate the materials submitted and issue a written decision thereon. The decision shall be issued within fifteen (15) working days following the close of the period allowed for the manager's reply. The manager or a chosen representative may file an appeal in accordance with rule 1240-6-11-.02 if the decision issued by the Director of the Services for the Blind Division fails to resolve the manager's dissatisfaction.

**Authority:** TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604 (c), 14-628, 14-14-404(c); 34 CFR 395.  
**Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1989. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

**1240-6-11-.02 EVIDENTIARY FAIR HEARING.** The agency shall provide the manager an opportunity to seek remedy for his/her dissatisfaction with agency action arising from the operation or administration of the vending facility program through an evidentiary fair hearing. The manager or a representative selected by the manager shall request an evidentiary fair hearing in writing within thirty (30) days of the agency's action from which the grievance arises or within fifteen (15) days following the managers receipt of a decision issued by the director of services for the Blind Division pursuant to rule 1240-6-11-.01. All rules on file pertaining to the Department's procedures for conducting fair hearings will apply to the request for a fair hearing in the Tennessee Business Enterprise Program.

- (1) A request for an evidentiary fair hearing, filed by the manager or a representative selected by the manager, shall include Form 22, the official appeal to the agency, which shall be completed and signed by the manager or his representative.
  - (a) The request shall be sent to the agency office in which the manager is supervised.

(Rule 1240-6-11-.02, continued)

- (b) A copy of the request shall be sent to the manager's representative on the Committee of Blind Vendors.
- (2) Time And Place Of Hearing. A fair hearing shall be held in the state office at a time and place convenient to the manager.
- (3) Notice Of Fair Hearing. A notice of hearing shall be given to the licensee at least fifteen (15) working days prior to the date set for the hearing.
- (4) Maximum Time Limit. The overall time limit for processing a fair hearing is ninety (90) days, except when a hearing is delayed for:
  - (a) Illness of the Manager.
  - (b) Delay in obtaining evidence because of circumstances beyond the control of the manager or the Department.
  - (c) The time limit applies to the period extending from the date the original request is received by the Department until the date of the decision.
- (5) Hearing Officer. An administrative judge shall be an impartial official, assigned by the Commissioner or his designated representative, to serve as hearing officer.
- (6) Right of Counsel. The licensee is entitled to legal counsel or other representation. Such counsel shall be at his own expense or he may wish to avail himself of any legal services available in the community at little or no cost.
- (7) Issuance of Subpoenas. It shall be the responsibility of the administrative judge to issue subpoenas, but it shall be the responsibility of the parties involved to request subpoenas from the judge. Subpoenaed witnesses must be given five (5) days notice in advance of the hearing date.
- (8) Rules of Evidence. The administrative judge shall exercise every reasonable effort to obtain the most credible evidence of fact in the case.
- (9) Presentation of Case. Each party shall be given every opportunity to present his case examine and cross-examine witnesses, present argument and rebut evidence.
- (10) Transcript. A transcript shall be made of the oral evidence and shall be made available to the parties upon request. The state licensing agency shall pay all transcript costs and other costs associated with the conduct of the hearing.
- (11) Content of Record. The transcript of testimony, exhibits, and all papers, and documents filed in the hearing shall constitute the exclusive record for decision.
- (12) Initial Order. The hearing officer shall file an Initial Order which shall include the issues and relevant facts addressed at the hearing; applicable provisions in law, regulations, and agency policy; findings of fact and conclusions with respect to issues; and the reasons and basis thereof. The Order shall also set forth any action necessary to resolve the issues.
- (13) Notice of Right To a Petition for Reconsideration and/or Appeal of the Initial Order. Written notice of the right to petition for reconsideration and/or appeal is to accompany the Initial Order mailed to the parties. A petition for appeal of an Initial Order must be filed with the Commissioner of the Department of Human Services or his/her designated representative within ten (10) days after entry of an Initial Order. Also, any party, within ten (10) days after entry of an Initial Order, may file a petition for

(Rule 1240-6-11-.02, continued)

reconsideration with the hearing officer stating the specific grounds upon which relief is requested. If an Initial Order is subject to both a timely petition for reconsideration and appeal, the petition for reconsideration shall be disposed of first; and a new ten (10) day period shall start to run upon disposition of the petition for reconsideration.

- (14) Final Order. The Commissioner of the Department of Human Services will review the facts of the case and the Initial Order which has been entered and enter the Final Order in the case.
- (15) Notice of Right To a Petition for Reconsideration of a Final Order. Written notice of the right to petition for reconsideration of the Final Order is to accompany the Final Order to the parties. Any party who feels aggrieved by a Final Order may, within ten (10) days following the date of the Order, file a written petition for reconsideration which shall specify in detail the reasons for the request.

**Authority:** TCA §§4-5-201 et seq., 71-1-105(12), 71-4-604(c), 14-628, 14-14-604(c); 34 CFR 395, 395.13(a)(d) and (c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly numbered as 1240-6-10). Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998.

### 1240-6-11-.03 ARBITRATION.

- (1) A vending facility manager, after having been provided a full evidentiary hearing by the agency because of dissatisfaction with some agency action, may request the convening of an arbitration panel by the Secretary of Education, because of the decision rendered as a result of such hearing.
- (2) A complaint requesting the convening of an arbitration panel must be filed by the vending facility manager within ninety (90) calendar days from the date the manager receives notification of the decision rendered in the full evidentiary hearing.

**Authority:** TCA §§14-628, 14-14-404 (c); 34 CFR 395, 395.13(a) through (1), (c) through (2). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed February 28, 1983; effective May 16, 1983. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987.